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No. 04-858

Supreme Court, U.S.
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In The

Supreme Court of the United States

MICHAEL J. GRASSO, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Reply to Brief In Opposition

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No. 04-858

In the Supreme Court of the United States

Michael J. Grasso, Jr.
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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Mr. Grasso submits this Reply Memorandum in Further Support of Petition for a Writ of Certiorari

A. There Is Still A Circuit Split With Respect To The Interpretation Of The Term "Proceeds" In The Money Laundering Statute

As set forth in the Petition for Writ of Certiorari, there is currently a split in the circuits regarding the interpretation of the term "proceeds" in the money laundering statute. The government argues that there is a possibility that the split "may not persist" given an appeal currently pending in the Seventh Circuit Court of Appeals.

The Seventh Circuit in *United States v. Scialabba*, 282 F.3d 475 (7th Cir.), *reh'g and reh'g en banc denied* (7th Cir.), *cert. denied*, 537 U.S. 1071 (2002), held that a defendant cannot be convict of money laundering

unless the government proves that the proceeds in question represent net income of the underlying illegal activity. The Seventh Circuit denied rehearing and rehearing *en banc* in *Scialabba*. The First Circuit and Third Circuit have held that the term "proceeds" in the money laundering statute means gross receipts and not net income. *United States v. Grasso*, 361 F.3d 160 (3d Cir. 2004); *United States v. Iacaboni*, 363 F.3d 1 (1st Cir.), *reh'g and reh'g en banc denied* (1st Cir.), *cert. denied*, 125 S. Ct. 480 (2004).

The government contends that this split might be eliminated by a case currently pending in the Seventh Circuit. In *United States v. Santos*, 342 F. Supp. 2d 781, 798-99 (N.D. Ind. 2004), the district court followed *Scialabba* in vacating a defendant's money laundering conviction. The government has appealed, and has filed a motion for initial *en banc* review. *United States v. Santos*, No. 04-4221 (7th Cir.). There is no indication, however, that the Seventh Circuit will grant *en banc* review or abandon its *Scialabba* decision.

The government's hope that the Seventh Circuit will reverse course is no reason to deny the instant petition. The circuit split exists today. Although the government urges that this case should be dismissed as to this issue, the most this Court should do is hold it in abeyance pending a decision by the Seventh Circuit in *Santos*.

B. Mr. Grasso Agrees That The Court Should Grant The Petition For Certiorari On The Sentencing Issue, Vacate The Judgment, And Remand The Matter To The Third Circuit For Consideration In Light Of *United States v. Booker*

In the Petition, Mr. Grasso contended that his sentence under the money laundering guidelines was unconstitutional pursuant to this Court's decision in *Blakely v. Washington*, 542 U.S. ___, 159 L. Ed. 2d 403, 124 S. Ct. 2531 (2004). Since Mr. Grasso filed his petition, this Court decided *United States v. Booker*, 543 U.S. ___, 160 L. Ed. 2d 621, 125 S. Ct. 735 (2005). Mr. Grasso agrees with the government that the appropriate disposition of the sentencing issue is to grant the petition for writ of certiorari, vacate the judgment, and remand the case to the United States Court of Appeals for the Third Circuit for further consideration in light of *Booker*. The Court has followed this procedure in hundreds of sentencing cases post-*Booker*. *E.g.*, *Gordon v. United States*, 2005 U.S. LEXIS 2214, 73 U.S.L.W. 3528 (Mar. 7, 2005).

CONCLUSION

The petition for a writ of certiorari should be granted. The Court should proceed with the money laundering issues while vacating the sentence and remanding the case to the Third Circuit for further consideration of the sentencing issues in light of *Booker*.

Respectfully submitted,

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